IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4266 OF 2005

Vikas Shrawan Badekar. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri V.V.Purwant for the Applicant.
Shri K.V.Saste, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 13th July, 2005.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the State. The offence registered against the Applicant is under sections 302, 147, 148, 223, 504, 506 of the Indian Penal Code. The allegation of the prosecution is that the Applicant along with others arrived in a jeep and started abusing the deceased Laxmibai and thereafter set her on fire by pouring kerosene on her person. The deceased suffered 96% of burn injuries.

2. The learned Advocate for the Applicant submitted that the dying declaration of the deceased has become doubtful as there is no proper endorsement of the Medical Practitioner certifying that the deceased was fit to give the statement. He submitted that the second reason for creating a doubt about the dying declaration is that the thumb impression of the deceased appears to be very clear and in the post-mortem notes it is stated that the deceased suffered 96% burn injuries. He submitted that there are two statements recorded of the

witness Suman Pawar on the same day. He pointed that the said statements show that the Applicant arrived at the scene to resolve the dispute. The learned A.P.P. has placed reliance on the various material to oppose the application.

3. There is some endorsement made by the Medical Practitioner on the dying declaration. Whether the concerned Medical Practitioner has really satisfied himself about the status of health of the deceased or not is a matter for evidence. To what extent the dying declaration can be relied upon is also a matter to be decided at the time of trial. As of today, there is sufficient material available on record to attribute an overt act on the part of the Applicant. The act complained of is that the Applicant poured kerosene on the person of the Laxmibai and set her on fire. In the face of the material available on record and the dying declaration, there is no reason to take a different view from the one taken by the learned Sessions Judge. The Application is, therefore, rejected.

4. Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

Judge.